

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

RECEIVED

MAY 22 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Petition For Rulemaking Of The)
Telecommunications Resellers Association)
To Eliminate Comity-Based)
Enforcement of Other Nations')
Prohibitions Against The Uncompleted Call)
Signaling Configuration Of International)
Call-Back Service)

RM-9249

REPLY COMMENTS OF
COMPAÑÍA ANÓNIMA NACIONAL TELÉFONOS DE VENEZUELA

Compañía Anónima Nacional Teléfonos de Venezuela ("CANTV") hereby submits its reply comments in the above-referenced proceeding. CANTV supports the vast majority of commenting parties that oppose the Petition for Rulemaking filed by the Telecommunications Resellers Association ("Petition"). The Petition seeks to reverse the "Call-Back Ban" which is the policy of the Federal Communications Commission ("FCC" or "Commission") that prohibits U.S. carriers from offering international call-back using uncompleted call signaling ("call-back") to countries where it is explicitly prohibited. CANTV believes that grant of the Petition would impede an orderly transition to competition in many countries, including Venezuela, and would undermine U.S. influence in international fora.

Contrary to the assertions of Telegroup, USA Global Link, and Ursus Telecom Corporation, reversal of the Call Back Ban is not necessary to promote liberalization in foreign countries. For example, Venezuela already has embarked on an ambitious, but

No. of Copies rec'd
List ABCDE

04Y

methodical, schedule for evolving to full telecommunications competition. It is one of 69 signatories to the recent World Trade Organization ("WTO") Basic Telecommunications Agreement. CANTV, Venezuela's incumbent carrier, was privatized in 1991 when VENWORLD TELECOM, C.A. purchased forty percent of the company.^{1/} Another twenty percent of CANTV was offered to employees in 1992 and 1997, with an additional 35.9 percent of the company publicly-traded on the New York Stock Exchange and the major Venezuelan stock exchanges since 1997. Also in 1997, CONATEL, the Venezuelan telecommunications regulatory agency, further liberalized the telecommunications market by licensing three basic rural telephony providers and three regional cellular providers. Competition in the Venezuela cellular market has been robust since market entry was introduced in 1991. In addition, CONATEL currently is preparing new mobile service regulations which will include the provision of PCS in Venezuela in the near future.

It is largely to ensure that Venezuela is allowed to continue liberalizing its telecommunications markets in an orderly fashion that Venezuela has prohibited call-back.^{2/} FCC reversal of the Call-Back Ban would disrupt the orderly transition to full competition by

^{1/} Indeed, the fact that VENWORLD TELECOM, C.A. is a GTE-led consortium with a 5 percent participation by AT&T International, Inc. and that CANTV's largest cellular competitor, TELCEL, is a BellSouth company, belies the Petition's assertion that reversal of the Call-Back Ban is somehow necessary to permit U.S. carriers to participate in foreign telecommunications markets. See Petition at 15-16.

^{2/} CONATEL expressly has prohibited call-back in Venezuela. See *Providencia Administrativa* No. 002, *Gaceta Oficial* No. 35.183, March 31, 1993, AVISO OFICIAL DE CONATEL (Comunicaciones "Call-Back")(August 11, 1995.) The U.S. Embassy in Caracas has publicly stated that Venezuela has prohibited call-back services by administrative order since March 1993. Venezuela also has stated that call-back is illegal in the November 1996 ITU Call-Back Survey. As illustrated by the FCC's most recent public notice on the status of the International Bureau's International Call-Back file, the Venezuelan Government has filed documentation with the Commission putting U.S. carriers on notice that call-back is illegal in Venezuela. See *Call-Back Service*, Public Notice, Nov. 7, 1997 (last updated April 16, 1998).

Venezuela and other WTO signatories.^{3/} The resulting sudden increase in competition and the downward pressure on foreign collection rates would likely destroy Venezuela's carefully crafted plans for gradual and orderly market liberalization, privatization, infrastructure development and rate rebalancing. Such an adverse impact would be contrary to the U.S. acknowledgement that the transition to full competition should be gradual and individualized to reflect the particular circumstances in each country.^{4/}

Contrary to the claim of the Petition and its supporters, call-back distorts competition in developing countries. Carriers operating lawfully in Venezuela assist competition with orderly tariff reductions, workforce reductions, and infrastructure development. In contrast, U.S. call-back operators typically seek to undercut the prices of such operators without contributing to the universal service, network development, or any of the telecommunications income, or other tax obligations under which lawful Venezuelan carriers operate.^{5/} As a study group of the ITU has found, even if most of the savings made by call-back users remains in the country and can be used to boost the country's economy, the resulting reduction in revenues by lawful carriers has a serious effect on their investment plans for

^{3/} See, e.g., Comments of the Public Service Regulatory Commission of the Republic of Panama ("Ente") at 9-10.

^{4/} See, e.g., *Rules and Policies on Foreign Participation in the U.S. Telecommunications Market*, Report and Order and Order on Reconsideration, 12 FCC Rcd. 23891, 24093 (1997)(statement of Chairman Kennard).

^{5/} Indeed, the harm to liberalization efforts caused when U.S. call-back operators evade Venezuelan taxes bears particular mention. Not only do call-back providers fail to pay taxes on the services they render in Venezuela, but they also deprive the Venezuelan Government of telecommunications tax and income tax proceeds that would have been paid on the revenues lawful Venezuelan operators lost to unlawful call-back. These lost tax revenues delay otherwise meaningful progress toward necessary market reforms and infrastructure development in Venezuela.

developing and modernizing the network in preparation for a new competitive environment.^{6/} As a consequence, call-back providers undermine the very competition they purport to advance by diverting income from the entities that are reducing prices in an orderly way as a transition to full competition.

As Venezuela and other countries move towards liberalization, the incentives that fuel call-back will diminish. However, in the interim, it is necessary for the FCC to ensure that U.S. carriers respect foreign call-back laws. U.S. carriers easily can, and do, evade Venezuelan laws and regulations. Venezuelan authorities may have little or no recourse against such violations because call-back is offered without virtually any assets or facilities in the foreign country and because U.S. call-back operators provide switched international telephony to Venezuela without a concession. These factors make law enforcement against U.S. call-back providers extremely problematic.^{7/} Moreover, because such carriers are located in the U.S. and under the jurisdiction of the Commission, the FCC is better situated than any other organization in the world to address this problem effectively.^{8/} It was these facts that originally led the FCC to establish the Call-Back Ban^{9/} and, as the record

^{6/} See "The Call-Back Phenomenon: A Complex Study," ITU News, No. 5, 1996 at 14 (summarizing the findings of the Telecommunication Standardization Advisory Group Study Group 3).

^{7/} See Comments of the Philippine Long Distance Telephone Company ("PLDT") at 1-2; see also Comments of the Costa Rican Institute of Electricity at iii, 2, 9.

^{8/} See also Comments of ICE at 9; see also Comments of Ente at 8.

^{9/} See, e.g., *VIA USA, Ltd., Telegroup, Inc., Discount Call International Co.*, Order on Reconsideration, 10 FCC Rcd. 9540, 9557 (1995)(recognizing that these factors create unusual difficulties for foreign countries to give effect to their laws and regulations prohibiting call-back).

demonstrates, these reasons remain equally salient today.^{10/} The only changed circumstance on which the Petition relies is the new WTO Basic Telecom Agreement. As the record amply demonstrates, that Agreement provides no justification to violate foreign anti-call-back laws, regardless of whether a nation expressly has exempted call-back from its WTO commitments.^{11/}

And finally, grant of the Petition would undermine America's influence abroad. The failure of the Commission to assist other nations stem unlawful behavior by U.S. carriers, particularly after having publicly committed to do so, would be tantamount to a declaration by the U.S. Government that it condones the evasion of foreign law. Such a declaration would only undermine the FCC's international credibility.

In sum, reversal of the Call-Back Ban would impede an orderly transition to competition in many countries, including Venezuela, and would undermine U.S. influence in

^{10/} See, e.g., Comments of PLDT at 2.

^{11/} See, e.g., Comments of Ente at 3-6; Comments of PLDT at 2; Comments of Cable and Wireless at 1, 5.

international fora. As a consequence, CANTV joins the vast majority of commenting parties in requesting that the Commission expeditiously deny the Petition.

Respectfully submitted.



Linda M. Wellstein, Esq.
International Legal Advisor
CANTV

Av. Libertador Centro Nacional de Telecomunicaciones
Piso 17, Ala Sur
Caracas, Venezuela 1010
011 582 500 1196

Counsel for Compañía Anónima Nacional Teléfonos de
Venezuela ("CANTV")

May 22, 1998